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IN THE

Supreme Court of the United States

October Term, 1947.

No. 284

REV. E. B. FIELDS,

Petitioner,

vs.

ROBERT E. HANNEGAN, Postmaster General of the
United States.

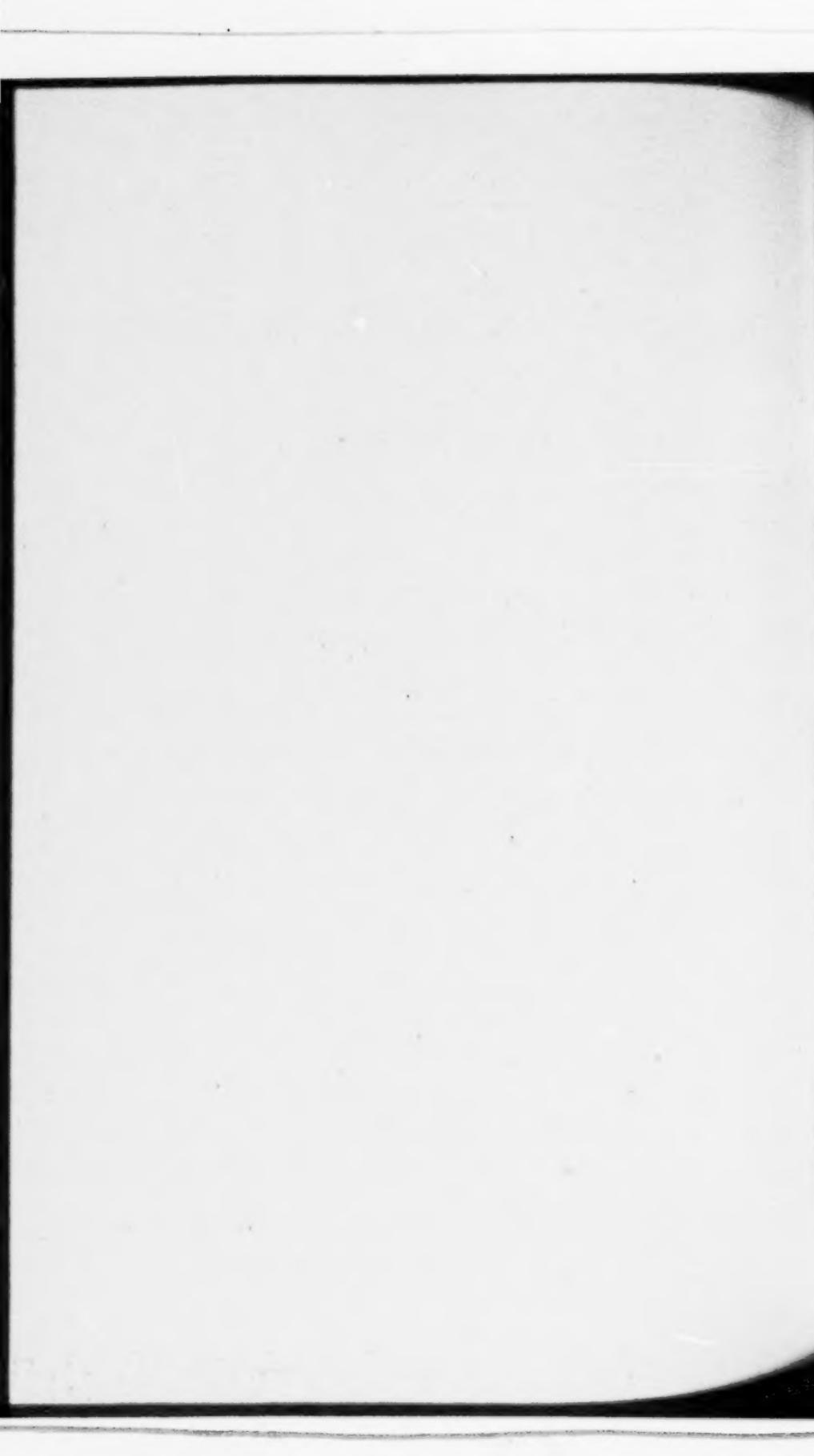
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IN THE

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REV. E. B. FIELDS,

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vs.

ROBERT E. HANNEGAN, Postmaster General of the
United States of America,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

*To the Honorable, the Chief Justice of the United States
and the Associate Justices of the Supreme Court of the
United States:*

Petitioner, Reverend E. B. Fields, the appellant below, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia (R. 3) which affirmed the final judgment for the respondent, the defendant in the original suit in the District Court of the United States for the District of Columbia (R. A.).

A.

Summary Statement of the Matters Involved.**1. *The Suit and the parties thereto.***

This proceeding originated as a suit in equity against the respondent to declare void a fraud order issued by the Postmaster General of the United States on December 26, 1944, and for injunctive relief against the issuance of the said order. That the Government filed a motion for summary judgment on the affidavit of the Solicitor General for the Postmaster General of the United States, in support of the said motion to dismiss, motion for summary judgment and motion in opposition to an injunction *pendente lite* which had not been filed by the petitioner herein. That the court granted the summary judgment. That the petitioner represents himself to be a Minister of the Gospel and contended in his original complaint that he was disseminating religious matter for a consideration together with certain emblems for the purpose of giving a physiological impetus to the subscribers for his religious readings. The petitioner contended in addition that he did not come within the purview of Sections 259 and 732, Title 39 of the United States Code and that he was protected by the Constitutional prohibition protecting religious matters.

That the evidence was not substantial and the issuance of the said fraud order was arbitrary, capricious and whimsical. That in opposition to the motion for a summary judgment it was argued that under Rule 56b, of the Federal Rules of Civil Procedure, that the court had no right to consider the same without answer and affidavits of personal knowledge. The Court granted the summary judgment, dismissed the suit which was affirmed by the United States Court of Appeals.

2. *Theory and Factual basis of the Suit.*

The essential facts are undisputed. That the Postmaster General of Washington, D. C. on December 26, 1944, issued a fraud order against the Reverend E. B. Fields delivered to the Postmaster for New York and subsequent to the issuance of the fraud order, transcript of record, page 41, he charges the Reverend E. B. Fields with operating a scheme to defraud. The said Reverend E. B. Fields filed suit (R. 1), joint appendix, in which he contends that he was disseminating religious matters and his advertisements were not misleading; that he was never known as a "Success Master,"; that the Postmaster General's order and finding was arbitrary, capricious and predicated on belief and opinion of the Postmaster General and that he did not come within the purview of the fraud statute. The fact admitted is that the Reverend E. B. Fields did disseminate religious matters through the mails and distributed emblems, which is plainly shown by Exhibit 1a, joint appendix 7, all of which matter the Postmaster General of the United States contends was misleading and fraudulent in its nature and was part of a scheme to defraud.

B.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code (28 U. S. Code, Sec. 347 (a)).

The judgment sought to be reviewed was entered in the Court of Appeals on the 2nd day of June, 1947.

The opinion of the Court of Appeals is filed as a part of the record herein. That a Statutory provision which either by the withholding of a permit or by virtue of the act of an Administrator in prohibiting the disseminating of religious matter or soliciting funds is a violation of the 1st and 14th Amendment to the extent that it is a censorship of religion by an Administrative Agency. The Court by the granting

of a summary judgment when the Government admits by a motion to dismiss the allegations of the complaint to be true where complaint states that the finding of the Postmaster General was not supported by substantial evidence and that his findings were arbitrary and capricious, being denied a hearing on the merits of his case. The affidavit in support of the motion for summary judgment was hearsay.

C.

Questions Presented.

1. Whether or not the issuance of a fraud order by the Postmaster General of the United States was in violation of the Petitioner's Constitutional rights?
2. Whether the dissemination of religious matters through the mails comes within the purview of the fraud statute?
3. Whether or not the Court by virtue of statements contained in the pleadings admitting the allegations of the complaint could grant a summary judgment on affidavits?

D.

Reasons Relied on for Allowance of the Writ.

1. The Supreme Court of the United States had held in *Cantwell vs. State of Conn.* 60 Supt. Ct. 900, 310 U. S. 296, that a Statutory provision prohibiting the solicitation of money for religious charities and philanthropic cause without the approval of the Public Welfare Council and the authorizing of the Secretary upon application of any person on behalf of such cause to determine whether such cause was a religious one or a *bona fide* object of charity or philanthropy is a violation of the 1st and 14 amendment to the extent that it authorizes the censorship of religion by the Secretary by the withholding of his approval.

There is no distinction between the approval of the Welfare Council in the Conn. case and the Postmaster General in this case withholding the right of the petitioner herein to use the mails for the purpose of disseminating religious matter.

2. This case presents a question of general importance which should be settled by this Court, namely, whether an Administrative Agency has the power and the authority to censure the dissemination of religious matter.

3. This case further presents a question as to when a Court can grant a summary judgment. The Federal Rules of Civil Procedure provides under rule 56b, "A party against whom a claim, counterclaim or cross-claim is asserted where a declaratory judgment is sought, may at any time move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Rule 56c states that, "The motion shall be served at least ten days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, if any show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, but wherever the pleadings present an issue of fact, the summary judgment should not be allowed before answer is filed," no answer was filed in the instant case. *Nikolson v. Nestles Milk Products, Inc.* (C. C. A. 5) 107 Fed. (2d) 17, such a procedure would be a denial of due process of law where a genuine issue of fact exists between the parties. Each of the foregoing questions were seasonably and properly raised in the District Court and also in the Court of Appeals of the District of Columbia and were considered and decided adversely to the Petitioner herein in both of the said Courts. The Court said that the evidence before the Postmaster General supports his find-

ing of fraud, since there was no other question before the court of summary judgment was right. That the literature as indicated shows that the representations were pertaining to religious readings and that such matter was purely and distinctly set forth in his advertisement and clearly shows that there was no intent to mislead. The Court of Appeals stated that a religious ingredient is no better defense to a charge of fraud than to a charge of murder, the court failed to consider the aspect between the representation of the petitioner and the specific intent on the part of a person who is charged with murder. That the representations made by the court in its comment said, the fact that a false statement may be obvious to those trained and experienced does not change its character or take away its power to deceive others less experienced. That the clear and distinct statement of religious matter firmly carries away any fraudulent intent on the part of the petitioner herein, that any religious matter under such a broad interpretation might be termed fraudulent.

In support of the foregoing grounds for application, your petitioner submits herewith, the accompanying brief setting forth in detail the precise facts and arguments thereto, the petitioner further states that this application is filed in good faith and not for the purpose of delay.

Conclusion.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia should be granted.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1947.

No.

REV. E. B. FIELDS,

Petitioner,

v.

ROBERT E. HANNEGAN, Postmaster General of the
United States of America,*Respondent.*

BRIEF IN SUPPORT OF THE PETITION FOR A WRIT
OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Opinion of Court Below.

The opinion of the United States Court of Appeals for the District of Columbia is not yet officially reported but is printed in the record filed in this cause.

Jurisdiction.

The jurisdiction of the Court is invoked under Section 240(2) of the Judicial Code (28 U. S. Code Sec. 347 (a)). The date of the judgment in this case is June 2, 1947, (R). No petition for a rehearing was filed in this case.

Statement of the Case.

The statement of the case and a statement of the salient facts from the record appear in the accompanying petition for certiorari. An elaboration of the facts will be made in the course of argument.

Errors Below Relied Upon Here.

The United States Court of Appeals for the District of Columbia in affirming a summary judgment in the District Court of the United States for the District of Columbia, upholding a fraud order issued by the Postmaster General of the United States on December 26, 1944 against the petitioner, Rev. E. B. Fields, the Court of Appeals erred in that:

I. They have improperly interpreted cases which give jurisdiction to the Postmaster General of the United States in the issuance of a fraud order and refused to apply doctrines as enunciated in the American Magnetic Healing Case decided by the Supreme Court of the United States.

II. That the Court of Appeals refused to recognize the Constitutional privileges of citizens as to religion and freedom of speech and extending the right of censorship to the Postmaster General of the United States by Judicial interpretation of Sections 259 and 732 Title 39 of the U. S. Code.

III. The Court further committed error in finding that the summary judgment was proper.

Argument.

The decision below and all other cases dealing with the power of the Postmaster General under the existing statutory provisions, Sections 259 and 732, Title 39 of the U. S. Code, dealing with the statutory provision giving the Post-

master the power to issue a fraud order as an administrator, fallaciously assumed that the subject matter of the order was clearly palpably fraudulent and not matters over which conscientious people of learning would differ.

The pertinent portions of the statutes involved are as follows: Act of Sept. 19, 1890, C. 908 (26 Stat. 466), U. S. C., Title 39, Sec. 259 as amended March 2, 1895, C. 191 (28 Stat. 964).

“The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct Postmasters at any post office at which registered letters or any other letters or mail matter arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such mail matter to the postmaster at the office which it was originally mailed, with the word ‘Fraudulent’, plainly written or stamped upon the outside thereof; and all such mail matter so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster General may prescribe.”

Act of Sept. 19, 1890, C. 908 (26 Stat. 466), U. S. C. Title 39 Sec. 732.

“The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money or of any real or personal property by lot, chance, or drawing of any kind through the mails by means of false or fraudulent pretenses, representations, or compromise, forbid the payment by any postmaster to said person or company of any postal money orders drawn to his or its order, or in his or its

favor, or to the agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money orders."

That the Postmaster General of the United States under a mistake of fact assumed jurisdiction over the instant case. It is to be argued here the same as was stated in the American Magnetic Healing v. McAnnulty case, 187 U. S. 94, 47 L. Ed. 90, there being a question of law simply:

" * * * stated in the bill being outside of the statute and the result is that the Postmaster General has ordered the retention of letters addressed to the complainant in a case not authorized by those statutes. To authorize interference by the Postmaster General, the facts stated must in some aspect be sufficient to permit him under the statutes to make order."

The American Magnetic Healing case further states that: "conceding *arguendo*, that when a question of fact arises, which if found in one way, would show a violation of the statutes in question in some particular, the decision of the Postmaster General that such violation had occurred, based upon some evidence to that effect, would be conclusive and final and not subject to review by any court, yet to that assumption must be added the statement that if the evidence before the Postmaster General, in any view of the facts, failed to show a violation of any Federal Law, the determination of that Official that such violation existed would not be the determination of that official that such violation existed would not be the determination of a question of fact but a pure mistake of law on his part, because these facts being conceded whether they amounted to a violation of the statutes would be a legal question and not a question of fact. Being a question of law simply and the case stated in the bill being outside of the statutes, the result is that the Postmaster General has ordered the retention of letters directed to complainant in a case not authorized by those statutes.

"To authorize the interference of the Postmaster General the facts stated must in some aspects be sufficient to permit him under the statute to make the order.

"The facts which are here admitted of record show that the case is not one by which any construction of those facts is covered or provided for by the statutes under which the Postmaster General has assumed to act, and his determination that those admitted facts do authorize his action is a clear mistake of law as applied to admitted facts, and the courts, therefore must have power in proper proceeding to grant relief. Otherwise the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer, whose action is unauthorized by any law and is in violation of the rights of the individual. Where the action of such an officer is thus unauthorized he thereby violates the property rights of the person whose letters are withheld. * * *"

That the Postmaster General in the instant case has wrongfully assumed jurisdiction under a mistake of law which cannot be disputed for the record clearly shows that the subject matter of the fraud order were matters of opinion and his assumption of jurisdiction is a clear mistake of law, that it is impossible to reduce to purely a question of fact the readings subscribed to and the literature disseminated. That in the case of *Millby v. United States*, 48 CCA 579, 109 Fed. 638, states the reason promises might seem unreasonable to others will not exclude him from the use of the mails and further states and it was held * * *

" * * * the letter on its face is plainly an indirect disguised proposition to sell counterfeit money, quite unskilled in form compared with the schemes which usually come to light in the adjudged cases, it is plainly evident from the course pursued in relation to the letter by the Postmaster at Albany that he was left in no doubt or difficulty whatever as to the meaning and object of the proposition contained in the defendant's letter, direct or indirect or other facts and circumstances which would constitute a scheme devised by the defendant to defraud Stites, herein this respect are not given in this indictment, the proposition contained in the letter was entirely devoid of frankness or artfulness and could not have been misunderstood in the ordinary case."

The fact that this man has clearly set forth distinctly the subscribers would receive religious readings is certainly sufficient to carry this case without the purview of the fraud statutes.

II.

The Constitution of the United States by virtue of the First Amendment, places a prohibition upon Congress with respect to legislation interfering with freedom of religion and freedom of speech:

ARTICLE I.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Congress however zealous is expressly deprived of any authority to legislate with respect to the exercise of religious freedom. The dissemination of religious literature is no more or less than a right reserved to the people by the Constitution.

This Court in ruling in the Cantwell Case, 310 U. S. 296:

“That a statute which makes it necessary for a philanthropic, religious or charity make application to and receive the approval of the Public Welfare Counsel and authorizing the Secretary to determine whether such cause is a religious one or a bona fide charity or philanthropy is a violation of the First and Fourth Amendment to the Constitution,”

certainly is analogous to the instant case which vests such power in the Postmaster General of the United States.

Religion as a medium of incentive and psychological impetus is an exercise of religious freedom and does not fall in the category of practices inimical to public welfare.

In the case of *Reynolds v. United States*, 98 U. S. 145, the court says:

“* * * Congress cannot pass a law for the Government or the Territory which shall prohibit the free exercise of religion, the First Amendment to the Constitution expressly forbids such legislation, and religious freedom is guaranteed everywhere throughout the United States so far as Congressional interference is concerned.”

The *Reynolds* case further stated:

“* * * Congress was deprived of all legislative power over mere opinion, but was free to reach actions which were in violation of social duties or subversive of good order. * * *”

The dissemination of religious literature is not a religious practice but is an expression of religious opinion being disseminated, as to whether it is good or bad is not before the Court, but as to whether contents and advertisements are such as to put on notice subscribers that they were to obtain from the sender religious literature as long as he had advertised the readings to be matters of Bible readings, whatever other motive he might have had, the petitioner is still within the perview and protection of the First Amendment as Mr. Justice Holmes and Mr. Justice Brandies in a dissenting opinion of this Court in the case of *Leach v. Carlile*, 258, U. S. 138, 66 L. Ed. 511, said as follows:

“* * * The Statute under which fraud orders are issued by the Postmaster General has been decided or said to valid so many times that it may be too late to except a contrary decision. But there are considerations against it that seem to me never to have been fully weighed and that I think it my duty to state.

The transmission of letters by any other means other than the postoffice is forbidden by the Criminal Code, Section 183-185, therefore, if these prohibitions are valid, this form of communication with people at a distance is through the postoffice alone; and notwithstanding all modern inventions letters are still the principal means of speech with those who are not before

our face. I do not suppose that anyone would say that the freedom of written speech is less protected by the First Amendment than the freedom of spoken words, therefore I cannot understand by what authority Congress undertakes to authorize anyone to determine in advance on the grounds before us, that certain words shall not be uttered. Even those who interpret the Amendment most strictly agree that it was intended to prevent previous restraints. We have not before us any question as to how far Congress may go for the safety of the Nation.

The question is only whether it may make possible irreparable wrongs and the ruin of business in the hope of preventing some cases of private wrong that generally is accomplished without the aid of the mail. Usually private swindling does not depend on the post-office. If the execution of this law does not abridge the freedom of speech I do not see what could be said to do so.

Even if it should be held that the prohibition of other modes of carrying letters was unconstitutional, as suggested in a qualified way in *Ex parte Jackson*, 96 U. S. 727, it would not get rid of the difficulty to my mind because the practical dependence of the public on the postoffice would remain. But the decision in that case admits that possibly at least the prohibition as to sealed letters. The decisions thus far have gone largely if not wholly on the ground that if the Government chose to offer a means of transportation which it was not bound to offer it could choose what it would transport; which is well enough when neither law nor the habit that the Government's action has generated has made that means the only one. But when habit and law combine to exclude every other it seems to me that the First Amendment in terms forbids such control of the post as was exercised here. I think it abridged freedom of speech on the part of the sender of the letters and that the appellant had such interest in the exercise of the right that he could avail himself of it in this case."

Buchanan v. Warley, 245 U. S. 60.

In both the Reynolds and the dissenting opinion in the Carlile case, the Court of Appeals in rendering its opinion, says, that a religious ingredient is no better defense to a

charge of fraud than to a charge of murder has no application when Congress is expressly prohibited from the passing of such legislation.

III.

Rule 56b, Federal Rules of Civil Procedure, controlling practice in the Federal Courts of the United States as to summary judgments.

Approaching the instant case with this Rule in mind, it is submitted that the evidence before the Postmaster General was insufficient to support a summary judgment.

Rule 56b, of the Federal Rules of Civil Procedure, controlling the practice in the Federal Courts of the United States, has been interpreted by Judicial bodies to mean that, where a genuine issue of fact exists, a summary judgment cannot be had. The opinion of the United States Court of Appeals in holding that the summary judgment was right (R. 134), is erroneous because several genuine issues of fact were involved and existed.

1. The bill of complaint alleged that the petitioner was engaged in disseminating religious readings (R. 2).
2. The Government contended that Scripture reading was not religious matters (R. 120).
3. The petitioner shows by his affidavit and exhibits that he clearly disclosed the method used to obtain the objectives is by scripture reading (R. 19).

That the United States Court of Appeals by its opinion in this case (R. 134) has reversed its position in the case of *Hannigan v. Read Magazine*, 158 Fed. 2d, 542, where the court said,

“The impression which is the criterion is that of a reasonable reader, not the most malign impression uninhibited by reason”,

but in the instant case changed its position as follows,

“the fact that a false statement may be obviously false to those who are trained and experienced does not change its character nor take away its power to deceive others of less experience” (R. 135).

That the statute conferring power to withhold the use of mail for fraud does not by implication or expressly give the Postmaster General the power of censorship as to quality of the literature, see

Hannegan v. Esquire, Inc., 327 U. S. 146.

That the advertisements of the petitioner clearly set forth that he would send scripture readings to the subscribers as a psychological impetus (R. 4 & 6).

That from casual reading of the advertisement a reasonable person would believe that they were to receive scripture readings and that all religious matters whatever they may promise is but a psychological impetus and is purely a question of opinion and belief and not susceptible to scientific proof.

If the courts were to take the position that representations dealing in these controversial fields of philosophy, religion, psychology and sociology were frauds if sold and disseminated for a consideration would hamper and stultify human knowledge and that all persons engaged in those fields of endeavor would be subjected to the brand of outlawry typified in this case.

That the court in consideration of the summary judgment and motion to dismiss, admitted in the record as to the truth of the allegations contained in the petitioner's complaint that he was disseminating religious matters and cannot later be heard to say in view of their admissions that the matters disseminated by the petitioner were not religious matters.

Conclusion.

WHEREFORE, for the reasons stated, it is respectfully
prayed that a writ of certiorari should issue from this Hon-
orable Court to the United States Court of Appeals for
the District of Columbia.

Respectfully submitted:

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(1)

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 284

REV. E. B. FIELDS, PETITIONER

v.

ROBERT E. HANNEGAN, POSTMASTER GENERAL OF
THE UNITED STATES

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA**

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court of the United States for the District of Columbia rendered no opinion in this case. The *per curiam* opinion of the Court of Appeals for the District of Columbia (R. 134-135) is reported at 162 F. 2d 17.

JURISDICTION

The judgment of the Court of Appeals was entered on June 2, 1947 (R. 136). The petition for a writ of certiorari was filed on August 20, 1947. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a postal fraud order issued in connection with petitioner's business enterprise was in violation of the constitutional guarantee of religious freedom because religious references were interspersed in the fraudulent representations made by him.
2. Whether, in light of the undisputed facts appearing from the record of the proceedings before the Post Office Department, the district court erred in entering a summary judgment for respondent in a suit to enjoin enforcement of the fraud order.

STATUTES INVOLVED

The statutes involved, R. S. §§ 3929 and 4041, are set forth in the Appendix, *infra*, pp. 14-16.

STATEMENT

In August and September of 1944, the Post Office Department advised petitioner that he had been charged with violating the postal fraud statutes by engaging in a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises to the effect (1) that he was a "Success Master"; (2) that his method constituted a "great science"; (3) that his method would enable persons quickly, every time and without

fail, to obtain success, to solve all their personal problems, to secure an abundance of money, to heal and banish all sickness, to achieve a return to good health, and to accomplish anything they might desire regardless of what it might be; and (4) that that method included personal treatment of each remitter by petitioner (R. 14-15). Petitioner was afforded an opportunity to show cause on September 8, 1944, why a fraud order should not be issued against him (R. 12-15).¹

A hearing was thereupon held on September 8, 1944, and although petitioner did not appear (R. 45), he did, through counsel, file an answer denying the charges and an affidavit in support of that denial (R. 18-25, 56-57). These were read into the record (R. 57-59) and together with the evidence adduced by the Government constituted the record of the proceedings before

¹ The memorandum of charges against petitioner (R. 14-15) with notice of hearing (R. 12-13), both addressed to "Fields, Rev. Fields, Rev. E. Fields, and B. Fields, Brooklyn, New York," were initially forwarded from Washington to the postmaster at Brooklyn, New York, for delivery to petitioner (R. 47). Petitioner refused to accept them unless they were addressed to him alone (R. 16), but they were nevertheless left with him, on August 31, 1944, by the postal inspector who had conducted the investigation (R. 17-18, 49-50). Petitioner thereupon returned the notice and memorandum in their envelope, unopened, to the Washington office of the Post Office Department (R. 53-55), and on September 2, 1944, a registered letter addressed to him only as "Rev. E. Fields" and containing copies of the memorandum and notice was delivered to him (R. 55-56).

the Assistant Solicitor of the Post Office Department (R. 43-131). From this record, the following facts appear:

Petitioner's misuse of the mails first came to the attention of the Post Office Department in March 1939, by his offer, through newspaper advertisements, of "lucky numbers, dream books," etc., with the statement "Just pay after Hit happens, daily 10 to 5"; upon investigation, petitioner modified his advertisements, and the case was closed (R. 29, 60). In August 1941, petitioner again was investigated with respect to his solicitation of contributions for the alleged purpose of establishing a church; petitioner admitted that the collections were being used in part for living expenses, and upon his agreement to discontinue such solicitation, the investigation was again closed (R. 29-30, 60, 61-62). In March 1942, once more, it appeared that petitioner was offering, by advertisement, to furnish "success, good health and happiness" for \$10, his "direct system" for \$2, or his "special" for \$4; after a call from the postal inspector, petitioner agreed to discontinue that enterprise and, in May 1942, he directed the postmaster at Brooklyn, N. Y., to return mail addressed to him endorsed "Out of Business" (R. 30, 60-61). In September 1942, however, petitioner rescinded that direction (R. 30, 62), and with the receipt of a complaint from a resident of Goulds, Florida, the case was

reopened on November 1, 1943 (R. 63). That complaint was, in substance, as follows (R. 64):

* * * I saw an advertisement in a Pennsylvania paper wherein Rev. E. Fields represented that he could cure various ailments. I later saw an advertisement in the Miami Whip which was something different from the one in the Pennsylvania paper.

I wrote Rev. Fields a letter and told him I was suffering from a chest cold and a doctor told me it was asthma. I later received a letter from Rev. Fields stating that he would cure me if I would pay him \$20.00. He agreed that I could pay him \$4.00 then and send him the balance in easy monthly payments. I sent money order No. 97914 on August 14, 1943.

I later received a letter from Fields asking me to sign and send to him a blue blank. I never signed the blank. I have never received any medicine, perfume, or any instructions for the treatment of my ailment nor have I received a refund of my money.

Investigation, including a series of test correspondence, disclosed that petitioner carried on his business somewhat as follows: He would insert in various newspapers throughout the United States, advertisements bearing headings such as "Quickest Success Master," and "Quickest Success Helper"; promising "Success and Happiness, Money, Quick Prosperity, New Start"; and offer-

ing, for a remittance of 10 cents, "Special Successful free information" and a solution to "All Problems" (R. 65-69). Generally, these advertisements made no reference whatsoever to religious subjects. To those responding to the advertisements and remitting the 10 cents, petitioner would send vari-colored circulars bearing pictures of clasped hands, bags of money, etc., and containing statements of which the following, gleaned from one circular, are typical: "Enjoy Money Quick Success * * * Heal all Sickness Without Medicine * * * Ps-Num E rology, Sure Winners * * * Get a Quick New Start in Life * * * Truly You can obtain Prosperity, Happiness, Plenty * * * Send for this real true method right now and secure for yourself abundance of money, perfect Love, Health, happiness—and whatever else your heart may desire * * * In all troubles, You may also See Him in Person, by Special appointment * * * Money When You Want It * * * Special Guaranteed Strictly Method un- wager Method Strictly Deity's * * * Race Special Policy Clearing Boleata and Cuba, Saves and Keeps * * * Astrology, What is Your Lucky Star, Ps-Numbers and Best Days, Astrology" (R. 75-78; see, also, R. 4-7). Interspersed in the circulars and mainly on their reverse sides, there were apparently unrelated references to the Deity and the Scriptures. (See, *e. g.*, R. 75-78.)

One of the circulars would include a blank perforated for detachment and reading as follows (R. 80) :

**SPECIAL GUARANTEED—REV. E. FIELDS—
GUARANTEED SPECIAL**

670½ GATES AVENUE, BROOKLYN, N. Y.

I do hereby send \$4, or \$_____, for Perfume Oil of attraction, or \$4, or \$_____, as a deposit for Special Quick Success Emblem, scientific Product Life Time daily Guide and your Person Treatment and Printed affirmation for Quick Satisfaction.

Just give according to amount of Success and things you purpose to Receive.

Special, You freely give this as faith is Substance of things hoped for, Special?

* * * * *

We give all until it hurts today and Success may bring double Money tomorrow.

My Special Successful information Never fail to Win, You Special Successful.

Upon receipt of at least \$2, petitioner would send the remitter a carboard box containing a small bottle of perfumed oil labeled "alleged Attraction Oil—Nidia Botanical Garden" (4 drams for a \$4 remittance; 2 drams for a \$2 remittance); the "Special Quick Success Emblem," a card upon which appeared a sketch of an angel, the words "The Lord is Risen" and "Luck's in the Lord, Luck's Obedient Faith is the Key," and a

sketch of a horseshoe with the words "Good Luck" and "Lucky Charm Mystic Success and Happiness. Just Carry in Purse, Daily"; and one or two typewritten quotations, allegedly from the Bible, or, in some cases, merely typewritten lists of numbers (R. 21, 86-87, 90). Although at one point in an affidavit made by petitioner, he referred to the oils he was selling as "religious oils" (R. 103), he later denied that they were advertised or intended as religious oils (R. 113) and admitted that they were "alleged to attract by scent and no other way" (R. 105), that they had no "intrinsic merit to relieve distress, soothe the troubled or to bring success" (R. 23), and that he did not know what the "Nidia Botanical Garden," which appears on the bottle's label, meant (R. 105).² Nor did he claim that the Success Emblem "*per se* has any force or merit" (R. 22).

Nevertheless, as a test series of correspondence conducted by the postal inspector disclosed, repeated and urgent demands made of petitioner by remitters of the \$2 or \$4 who had expected more

² Petitioner had the oils mixed by a wholesale house in New York in accordance with his "preference of scent," purchased the labels, and bottled the oils and labeled the bottles himself (R. 104-105). He estimated his earnings from this enterprise at approximately \$2,000 per year (R. 107).

for their money would gain them nothing beyond the scented oil, emblem, and typewritten quotations, except possibly additional typewritten lists of cryptic numbers (R. 83-90). Petitioner admitted that this was all he intended to furnish for the money sent to him (R. 21, 110).

Petitioner denied that his advertisements and circulars promised "to send anybody success by the use of any success method of mine, and especially by the use of my goods or products" (R. 24). He dismissed the notion that some people might be deceived by his advertisements: " * * * it is not my business to know or care anything about who may or may not understand the same, especially if and when they sign their name to my contract as aforesaid and send me their or my money" (R. 115). He stated that all requests for refunds were consigned to "the waste-paper basket" (R. 117), remarking that " * * * if my customers want refunds they can hold God responsible if success is not attained by my method * * *" (R. 109). In substance, his defense was that his method was "the method of the Scriptures" (R. 23), "the distribution to my customers of an agreed consideration of certain known and accepted truths as founded in the Bible" (R. 22), and that the use of the oil "in

full faith that God will help the suppliant, is believed to be of great value" (R. 23).³

After the hearing was held before the Assistant Solicitor of the Post Office Department, a copy of the transcript of the proceedings was sent to petitioner's counsel, and he was invited to submit a brief, argument, or proposed findings of fact and of law on the question whether a fraud order should issue (R. 27-28). Petitioner ignored that invitation, however, and on December 26, 1944, the Postmaster General issued the fraud order here involved, prohibiting the payment of any postal money order drawn to petitioner's order and directing the return of all letters and other mail matter to the postmasters at the offices at

³ Petitioner strained to paint his advertisements and circulars as religious literature. For example, he contended that the words "scientific product," "Life Time Guide" and "printed affirmation" on the order blank really meant the Bible, although the Bible was never mentioned (R. 105-106); that the use of the words "guarantee" or "guaranteed" referred to the guarantee derived from trust in the Lord (R. 108); that "straight dope win you straight" meant the Bible (R. 110); and that "Ps—Num E rology" meant numbers of chapters of the Bible (R. 111).

Petitioner claimed to be the pastor of The True Light Spiritual Church of Christ, conducted at the address where he resided, which was incorporated (apparently by him) in 1938 (R. 104). The postal inspector was unable, however, to discover any facility for religious meeting or worship at the designated address (R. 119-120), and, in any event petitioner himself stated that the business involved here had no connection with the church (R. 104) and that the enterprise was carried on "for a living for myself and my family" (R. 109).

which they were originally mailed for delivery to the senders with the words "Fraudulent: Mail to this address returned by order of Postmaster General" written or stamped upon the outside of such mail (R. 41-42).

Petitioner thereafter filed a complaint in the District Court of the United States for the District of Columbia requesting an injunction against enforcement of the fraud order (R. 1-3). Motions to dismiss the complaint for failure to state a claim for relief and for summary judgment pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure (28 U. S. C. 723 (c) note, Rule 56 (b)), thereupon interposed on behalf of respondent (R. 8), were granted, the complaint dismissed on the merits, and judgment entered for respondent (R. 131-132). An appeal was then taken to the United States Court of Appeals for the District of Columbia (R. 132-133), which, in a *per curiam* opinion, affirmed the judgment of the district court (R. 134-136).

ARGUMENT

1. The religious freedom guaranteed by the First Amendment has not been violated by the fraud order entered in this case. As the Court of Appeals found, petitioner's advertising matter was not religious literature (R. 135). The newspaper advertisements generally contained no religious allusions whatever (R. 65-69), and the smattering of references to Deity and Scriptures

in the circulars was eclipsed by the offers of mundane bounties such as quick money, prosperity, and plenty, strengthened by insinuations of lucky numbers, astrological advice, and the like (R. 75-78).

2. Even were we to assume that petitioner's enterprise was in some aspects religious in character, petitioner could not on that account obtain constitutional immunity for fraud. The Postmaster General was amply justified in holding petitioner's enterprise was essentially a scheme to defraud. Each of petitioner's advertisements and circulars "bristles with the indicia of deception and fraud." *Neher v. Harwood*, 128 F. 2d 846, 853 (C. C. A. 9), certiorari denied, 317 U. S. 659. The record contains ample demonstration of petitioner's bad faith in conducting his business and of his utter disregard for the likelihood that readers of his advertisements and literature might be deceived to their prejudice. (See, e. g., R. 24, 109, 115, 117.) In such circumstances, the Postmaster General was warranted in finding that petitioner himself did not believe his representations and promises and, that, consequently, he was guilty of fraud when he made them. The issuance of a fraud order directed at such fraudulent representations is hardly a blow at religious freedom. *United States v. Ballard*, 322 U. S. 78; *United States v. Carruthers*, 152 F. 2d 512 (C. C. A. 7), certiorari denied, 327 U. S. 787. The cases cited by petitioner (Pet. 12, 13) are not in

conflict. They eloquently assert the breadth of our concept of religious freedom. But broad as that concept is, it does not protect conduct violative of a statute enacted for the protection of the community from fraud and deception. *Chaplin-sky v. New Hampshire*, 315 U. S. 568, 572; *Davis v. Beason*, 133 U. S. 333; *Reynolds v. United States*, 98 U. S. 145, 166.

3. There was no error in the entry of a summary judgment for respondent in the district court. It is settled that judicial review of postal fraud orders is limited to a determination of whether the ruling of the Postmaster General was "fairly arrived at and has substantial evidence to support it * * *." *Leach v. Carlile*, 258 U. S. 138, 140. In the light of the undisputed facts in this proceeding, the case was an appropriate one for summary judgment. *National Broadcasting Co. v. United States*, 319 U. S. 190, 227.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

✓ PHILIP B. PERLMAN,
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SEPTEMBER 1947.

APPENDIX

1. R. S. 3929, 39 U. S. C. 259 reads as follows:

The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any post office at which registered letters or any other letters or mail matter arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such mail matter to the postmaster at the office at which it was originally mailed, with the word "Fraudulent" plainly written or stamped upon the outside thereof; and all such mail matter so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster General may prescribe. Nothing contained in this section shall be so construed as to authorize any postmaster or other person to open any letter not addressed to himself. The public advertisement by such person or company so con-

ducting such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by mail to any other person, firm, bank, corporation, or association named therein shall be held to be *prima facie* evidence of the existence of said agency by all the parties named therein; but the Postmaster General shall not be precluded from ascertaining the existence of such agency in any other legal way satisfactory to himself.

2. R. S. 4041, 39 U. S. C. 732 reads as follows:

The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, forbid the payment by any postmaster to said person or company of any postal money orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money orders.

This shall not authorize any person to open any letter not addressed to himself.

The public advertisement by such person or company so conducting any such lottery,

gift enterprise, scheme, or device, that remittances for the same may be made by means of postal money orders to any other person, firm, bank, corporation, or association named therein shall be held to be *prima facie* evidence of the existence of said agency by all the parties named therein; but the Postmaster General shall not be precluded from ascertaining the existence of such agency in any other legal way.